

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

AS.No. 117 of 1998

O.S.NO.40 OF 1977 OF THE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM

APPELLANT(S)/DEFENDANTS 1,2,5 AND 6 :

1. REV.FR.POULOSE OUSEPH,
PATHICKAL, PERUMBAVOOR VILLAGE, DO. POST.
2. REV.FR.A.P.YACOB, ATHIRAMPUZHA HOUSE,
KALLIVELIL, KOMBANAD P.O., VENGOOR.
3. POULOSE ULAHANNAN, KANJIRATHUMKUDY HOUSE,
ASAMANNOOR P.O., ASAMANNOOR KARA.
4. MAR THOMAS DIONYSIUS METROPOLITAN,
RESIDING AT VALIDA PALLI CHURCH, KOTHAMANGALAM.

*** ADDITIONAL 5TH APPELLANT IMPLEADED**

5. REV.FR.VARGHESE, S/O.BABY,
THEKKEKARA HOUSE, PERUMLEAVOOR VILLAGE, -DO- KARA,
KUNNATHUNADU TALUK.

*** ADDITIONAL 5TH APPELLANT IS IMPLEADED AS PER ORDER
DATED 24.11.2009 IN C.M.P.NO.1501 OF 1998.**

**BY SRI.N.SUKUMARAN (SENIOR ADVOCATE)
ADVS. SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL
SRI.S.SHYAM**

RESPONDENT(S)/PLAINTIFFS AND DEFENDANTS 2 AND 4 :

1. REV.FR.THARIAN, KEECHERIL HOUSE,
AIMURI P.O., KURUPPAMPADY.
2. P.V.VARGHESE, PANACKAL HOUSE,
METHALA, KURUPPAMPADY.
3. P.V.POULOSE, -DO- -DO-

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& 4. P.G.POULOSE,
PANAVELIL HOUSE, METHALA P.O., KURUPPAMPADY (DIED).

5. M.T.VARGHESE,
MEKKAMALIL HOUSE, -DO- -DO-

6. M.K.ELIAS,
MEKKAMALIL HOUSE, ASAMANNOR P.O., KURUPPAMPADY.

7. P.C.POULOSE,
PERUVUNGAL HOUSE, METHALA P.O., KURUPPAMPADY.

& 8. REV.FR.M.J.THOMAS,
MEKKAMALIL HOUSE, ASAMANNOR P.O., KURUPPAMPADY (DIED).

& 9. M.G.ISSAC, MENOTHUMALIL HOUSE,
ASAMANNOR P.O., ODAKKALY (DIED).

& R4, R8 AND R9 DIED. IT IS REPORTED THAT THE APPELLANTS DO NOT WANT TO IMPEAD THE LEGAL REPRESENTATIVES OF THE ABOVE DECEASED RESPONDENTS AS PER THIS COURT'S ORDER DATED 16.02.1998 IN A.S.NO.117 OF 1998.

@ ADDITIONAL R10 IMPEADED

10. REV.FR.THOMAS PAUL RAMBAN,
S/O.LATE PAULOSE, AGED 38 YEARS, MARACHERIL HOUSE,
KOTHAMANGALAM.

@ IS IMPEADED AS ADDITIONAL 10TH RESPONDENT IN HIS CAPACITY AS ASSISTANT PRIEST OF ST.MARY'S CHURCH, ODAKKALY VIDE ORDER DATED 10.02.2010 IN I.A.NO.376 OF 2010.

R1 TO R3 ADV. SRI.BIJU ABRAHAM
R5 & ADDL.R10 BY SRI.GEORGE THOMAS (MEVADA) (SENIOR ADVOCATE)
ADVS. SRI.MANU GEORGE KURUVILLA
SRI.AMAL GEORGE
R6 ADV. SRI.P.J.PHILIP

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 12-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE 1: A TRUE COPY OF THE NOTICE PUBLISHED BY
THE PETITIONER DATED 19.01.2015 IN RESPECT OF
THE FESTIVAL OF THE CHURCH.

ANNEXURE 1 IN I.A.NO.901 OF 2015: A TRUE COPY OF THE INVITATION FOR
THE 12TH DEATH ANNIVERSARY OF
LATE ALIYAMMA JOHN,
THEKKUMATTATHIL.

ANNEXURE 2: A TRUE COPY OF THE INVITATION FOR THE 14TH DEATH
ANNIVERSARY OF LATE P.V.VARGHESE, PANAKKAL.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

P.B.SURESH KUMAR, J.

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A.S.No.117 of 1998

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Dated this the 12th day of October, 2015.

J U D G M E N T

The decision of the District Court, Ernakulam in O.S.No.40 of 1977 is under challenge in this appeal. Defendants 1, 2, 5 and 6 in the suit have preferred the appeal.

2. Plaintiffs 2 to 7 are parishioners of the plaint schedule church, namely, St.Mary's Orthodox Church, Odakkali. The plaint schedule church is a constituent parish church under the Malankara Orthodox Syrian Church, hereinafter referred to as 'the Malankara Church' for short. The suit was filed by the plaintiffs in a representative capacity representing the parishioners of the plaint schedule church. According to the plaintiffs, the plaint schedule church is to be

administered in accordance with the constitution of the Malankara Church framed by the Malankara Association on 26.12.1934 and the first plaintiff is the Vicar of the plaint schedule church duly appointed by the concerned Diocesan Metropolitan of the Malankara Church in accordance with its 1934 constitution. It is the case of the plaintiffs that defendants 1 and 2 who were removed from the office the Vicar and the Priest respectively of the plaint schedule church and defendants 4 and 5 who claimed to have been elected to the office of the trustees of the plaint schedule church, are attempting to induct the third defendant as the Vicar of the plaint schedule church. It is also the case of the plaintiffs that defendants 1 and 2 have nothing to do with the plaint schedule church and the election on the basis of which defendants 4 and 5 claim to hold the office of the trustees of the plaint schedule church is unlawful. It is the further case of the plaintiffs that defendants 1, 2, 4 and 5 of late became part of an

association called “Antiokya Viswasa Samrakshana Samithy” formed with the object of taking out parish churches under the Malankara Church out of the control of its Metropolitan and constitution and the third defendant is attempted to be inducted as the vicar of the plaint schedule church by defendants 1, 2, 4 and 5 as part of their attempt to take out the plaint schedule church out of the episcopal authority of its Metropolitan. According to the plaintiffs, the aforesaid attempt of defendants 1, 2, 4 and 5, in the circumstances, is illegal. The plaintiffs, therefore, claimed a decree declaring that the plaint schedule church is liable to be administered in accordance with the constitution of the Malankara Church and that the first plaintiff is entitled to administer the church as its Vicar. A decree of permanent prohibitory injunction restraining the defendants and their supporters from causing any obstructions to the first plaintiff or to other Priests appointed by the Metropolitan of the Malankara Church

for the plaint schedule church in entering or conducting religious worship in the plaint schedule church was also sought. The reliefs claimed in the suit are the following:

- A. Declaring that the plaint church and cemetery and its assets are to be administered under the episcopal authority of His Grace Philipose Mar Theophilose, the Metropolitan of the Ankamali Diocese of the Malankara Orthodox Church or whose ever may succeed him in office and under the constitution of the said church; that the 1st plaintiff is the vicar entitled to officiate in religious worship and services in the plaint church and to administer the same.
- B. Restraining the defendants and their agents and supporters from any way obstructing the 1st plaintiff or other priests appointed by the said Diocesan Metropolitan or successor in exercise of the duties of vicar of the plaint Odakkali St.Mary's Church or from entering or conducting any religious worship or service in the plaint church and cemetery or from inducting into the plaint church any priest or religious dignitary not appointed by the said Diocesan Metropolitan Philipose Mar Theophilose or successors in office.
- C. Directing the defendants to pay the plaintiffs the cost of the suit and,
- D. Granting such other reliefs as may be claimed and deemed necessary for the ends of justice.

3. The defendants 1, 2, 5 and 6 resisted the suit by filing written statements. The main contention raised by the defendants in the written statements was that the suit is one coming within the ambit of Section 92 of the Code of Civil Procedure ('the Code' for short) and as the plaintiffs have not obtained leave of the court as provided under Section 92 of the Code, the suit is not maintainable. They also contended that there are two factions in the Malankara Church namely, Catholicos faction and Patriarch faction; that the parishioners in the plaint schedule church belong to the patriarch faction and they do not accept the 1934 constitution of the Malankara Church; that the Metropolitan of Malankara Church, whoever he may be, has only spiritual supervision over the parish churches and that the parish churches under the Malankara church are to be administered by the parish assembly through its elected managing committee. It was also contended by the aforesaid defendants that the vicar

and the priest for the parish churches are to be appointed by the parish assembly and that the third defendant is the duly appointed vicar of the plaint schedule church appointed by its parish assembly. It was further contended by the aforesaid defendants that defendants 4 and 5 have been lawfully elected by the parish assembly of the plaint schedule church as its trustees in its meeting held on 14.12.1975.

4. Though the trial court found that the plaint schedule church is a public charity coming within the ambit of Section 92 of the Code, it rejected the plea of the defendants that the plaintiffs should have obtained the leave of the court holding that the reliefs claimed in the suit do not come within the scope of the reliefs provided for in Section 92 of the Code. On merits, the trial court found that the plaint schedule church being a parish church under the Malankara Church, the same is to be administered in accordance with its 1934 constitution and consequently, rejected the contentions

raised by the defendants and decreed the suit as prayed for. The defendants aforesaid who have contested the suit are aggrieved by the decision of the trial court and hence this appeal.

5. Heard the learned Senior Counsel for the appellants as also the learned Senior Counsel for the respondents.

6. The learned Senior Counsel for the appellants contended that the suit in the instant case is a suit which falls squarely within the ambit of Section 92 of the Code and that since the plaintiffs have not obtained leave of the court to institute the suit, the same is not maintainable. Per contra, the learned Senior Counsel for the plaintiffs contended that none of the reliefs claimed by the plaintiffs in the suit would come within the scope of Section 92 of the Code and therefore, the suit would not come within the ambit of Section 92 of the Code.

7. The short question that falls for consideration in the appeal, in the circumstances, is as to whether the

suit is one coming within the ambit of Section 92 of the Code.

8. There cannot be any dispute to the fact that a suit instituted in a representative capacity for the beneficiaries of a public trust alleging breach of trust in respect of the affairs of the public trust and seeking any one of the reliefs enumerated in Section 92 of the Code would fall within the ambit of the said provision in the Code. As rightly found by the trial court, the plaint schedule church is a parish church under the Malankara Orthodox Syrian Church. The fact that the suit is a representative action on behalf of the parishioners of the plaint schedule church is not in dispute. As such, the issues to be resolved are whether the suit is one instituted alleging breach of trust in relation to the affairs of the plaint schedule church and whether the reliefs claimed in the suit would fall within the scope of the reliefs enumerated in Section 92 of the Code. As noted above, the specific case of the plaintiffs is that

the plaint schedule church is to be administered in accordance with the 1934 constitution of the Malankara Church and the defendants are attempting to administer the affairs of the plaint schedule church otherwise than in accordance with its constitution and in defiance of the episcopal authority of the Metropolitan of the Malankara church. The said allegations, according to me, would certainly amount to allegations of breach of trust contemplated under Section 92 of the Code. It is trite that the question as to whether the reliefs claimed in a suit would fall within the ambit of Section 92 of the Code is to be ascertained by examining the purpose for which the suit is instituted. [See **Paramantmanand Saraswati v. Ramji Tripathi** (AIR 1974 SC 2141)]. It is also trite that if the grant of the reliefs asked for in the suit will have the effect of allowing any one of the reliefs enumerated in Section 92 of the Code, the suit is not maintainable without the leave of the court. [See, **Jambulinga Pathan and**

another v. Akilanda Asari and others (AIR 1927 Madras 886)]. As noticed above, the declaration that the first plaintiff is the duly appointed vicar of the plaint schedule church and that he is entitled to administer the affairs of the plaint schedule church will certainly have the effect of removing defendants 3 to 5 who claim to be the vikar and trustees of the plaint schedule church from the administration of the church. Likewise, the prohibitory injunction sought restraining the contesting defendants from interfering with the affairs of the plaint schedule church will also have the effect of removing the aforesaid defendants from their respective offices. As such, I have no hesitation to hold that the reliefs claimed in the suit are reliefs coming within the scope of Section 92 of the Code.

In the result, the appeal is allowed, the impugned judgment is set aside and the Suit O.S.No.40 of 1977 is dismissed as not maintainable for want of leave as provided for under Section 92 of the Code. All

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the interlocutory applications in this appeal are closed.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**

Kvs/-

// true copy //

PA TO JUDGE.